

# EXHIBIT B

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
TEXARKANA DIVISION

FRUCTUOSO TORRES,  
*Plaintiff,*

V.

JASON THOMAS OLIVER, AND  
PROGRESSIVE TRANSPORTATION,  
LLC,  
*Defendants.*

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NO: 5:21-cv-00113  
JURY

**DEFENDANTS JASON THOMAS OLIVER AND  
PROGRESSIVE TRANSPORTATION, LLC'S  
INDEX OF MATTERS BEING FILED**

TO: THE CLERK OF THE UNITED STATES DISTRICT COURT. EASTERN DISTRICT  
COURT OF TEXAS, TEXARKANA DIVISION

Defendants Jason Thomas Oliver and Progressive Transportation, LLC, attach this Index  
of Matters Being Filed to their Notice of Removal.

1. Docket Report/Registry of Actions for Cause No. 21C1089-005;
2. Plaintiff's Original Petition;
3. Affidavit of Service and Citation for James Thomas Oliver;
4. Affidavit of Service and Citation for Progressive Transportation, LLC; and
5. Defendants' Original Answer.

DATED this 30<sup>th</sup> day of September, 2021.

Respectfully submitted,

**CASTAGNA SCOTT, L.L.P.**  
1120 S. Capital of Texas Highway  
Building 2, Suite 270  
Austin, Texas 78746  
512/329-3290  
888/255-0132 fax

By: /s/ Lynn S. Castagna  
Lynn S. Castagna  
State Bar No. 03980520  
[Lynn@TexasDefense.com](mailto:Lynn@TexasDefense.com)  
Gerry Lowry  
State Bar No. 12641350  
[Gerry@TexasDefense.com](mailto:Gerry@TexasDefense.com)

**ATTORNEYS FOR DEFENDANTS JASON  
THOMAS OLIVER AND PROGRESSIVE  
TRANSPORTATION, LLC**

**REGISTER OF ACTIONS**CASE NO. 21C1089-005

FRUCTUOSO TORRES vs. JASON THOMAS OLIVER ET AL

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§Case Type: **Injury or Damage - Motor Vehicle**  
Date Filed: **09/01/2021**  
Location: **5th District Court****PARTY INFORMATION**

<b>Defendant</b>	<b>OLIVER, JASON THOMAS</b>	<b>Attorneys</b> <b>LYNN S CASTAGNA</b> <i>Retained</i> 512-329-3290(W)
<b>Defendant</b>	<b>PROGRESSIVE TRANSPORTATION, LLC</b>	<b>LYNN S CASTAGNA</b> <i>Retained</i> 512-329-3290(W)
<b>Plaintiff</b>	<b>TORRES, FRUCTUOSO</b>	<b>JOHN D SHEPPARD</b> <i>Retained</i> 713-489-1206(W)

**EVENTS & ORDERS OF THE COURT****OTHER EVENTS AND HEARINGS**

09/01/2021	<a href="#">Original Petition w/Discovery &amp; Jury Demand (OCA)</a>		
09/01/2021	<a href="#">Issue</a>		
	EFILED TO MICHELE HARDY ENV 56863126		
09/01/2021	<b>Citation</b>		
	JASON OLIVER	Served	09/02/2021
	OLIVER, JASON THOMAS	Response Received	09/27/2021
09/01/2021	<a href="#">Issue</a>		
	EFILED TO MICHELE HARDY ENV 56863126		
09/01/2021	<b>Citation</b>		
	PROGRESSIVE TRANSPORTATION	Served	09/02/2021
	PROGRESSIVE TRANSPORTATION, LLC	Response Received	09/27/2021
09/01/2021	<b>C/Mail Coordinator</b>		
	EMAILED HEATHER THOMAS		
09/09/2021	<a href="#">Affidavit of Private Process Server</a>		
	PROGRESSIVE TRANSPORTATION (SERVED)		
09/09/2021	<a href="#">Service Papers Returned</a>		
	JASON OLIVER (SERVED)		
09/27/2021	<a href="#">Original Answer</a>		
	& JURY DEMAND		
09/27/2021	<a href="#">Original Answer</a>		
	& JURY DEMAND		

CAUSE NO. 21C1089-005

FRUCTUOSO TORRES,	§	IN THE DISTRICT COURT OF
	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	
	§	
	§	BOWIE COUNTY, TEXAS
JASON THOMAS OLIVER, AND	§	
PROGRESSIVE TRANSPORTATION,	§	
LLC	§	
	§	
<i>Defendants.</i>	§	____ JUDICIAL DISTRICT

**PLAINTIFF’S ORIGINAL PETITION AND JURY DEMAND**

Plaintiff Fructuoso Torres, files this Original Petition and Jury Demand against Defendants Jason Thomas Oliver and Progressive Transportation, LLC.

**I. DISCOVERY LEVEL**

1. Discovery may be conducted under Level 2 of the Texas Rules of Civil Procedure.

**II. NATURE OF CASE**

2. This is a personal injury commercial vehicle collision case.

**III. JURISDICTION & VENUE**

3. Venue and jurisdiction are proper in Bowie County because all or a substantial part of the events giving rise to the claim occurred here.

4. Plaintiff seeks damages within the jurisdictional limits of this Court.
5. Plaintiff seeks monetary relief of over \$1,000,000 but not more than \$10,000,000.

**IV. PARTIES**

6. Plaintiff Fructuoso Torres is a resident of Texas.
7. Defendant Jason Thomas Oliver (“Defendant Oliver”) is an individual who resides

in Johnston County, North Carolina. He may be served by and through J. Bruce Bugg, Jr., Texas Transportation Commission, 125 E. 11<sup>th</sup> Street, Austin, Texas 78701 by forwarding to Jason Thomas Oliver at 966 Braswell Road, Smithfield, North Carolina 27577, or wherever else he may be found.

8. Defendant Progressive Transportation, LLC (“Defendant Progressive”) is a Limited Liability Company doing business in the State of Texas and may be served through its registered agent, Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company at 211 E. 7<sup>th</sup> Street, Suite 620, Austin, Texas 78701.

## **V. FACTS**

9. On or about September 19, 2019, Plaintiff was traveling westbound on IH-30 in Bowie County, Texas, when Defendant Oliver failed to control his speed while operating a vehicle in the course and scope of his employment for Defendant Progressive and violently struck Plaintiff’s vehicle. As a result, Plaintiff suffered severe and debilitating injuries.

## **VI. CAUSES OF ACTION**

### **A. Negligence, Gross Negligence, and Negligence Per Se of Defendants**

10. The negligence, gross negligence, and/or negligence *per se* of Defendant OLIVER includes but is not limited to the following acts and/or omissions of negligence that proximately caused the occurrence in question and the injuries to Plaintiff:

- failure to reasonably operate the motor vehicle;
- failure to keep the vehicle in a safe and operable condition;
- failure to brake to avoid the collision;
- failure to apply brakes in a timely manner;
- failure to keep a proper lookout;
- driving at speed that exceeded that which a reasonably prudent person in the same or similar circumstances would have driven;
- failure to control speed;
- failure to steer or otherwise maneuver to avoid the collision;
- failure to understand and/or utilize proper space management;

- failure to yield right of way;
- failure to sound horn to warn of the collision;
- failure to keep a safe closing distance;
- failure to press the brake pedal appropriately, and instead pressing the gas pedal;
- colliding with Plaintiff's vehicle;
- willfully and wantonly operating a motor vehicle at an excessive rate of speed or, in the alternative, traveling at a greater rate of speed than would a person of ordinary prudence under the same or similar circumstances, without regard for the rights, safety, or welfare of others;
- willfully and wantonly failing to maintain proper control of the motor vehicle, without regard for the rights, safety, or welfare of others; or
- recklessly driving a vehicle in willful or wanton disregard for the rights, safety, or welfare of persons or property.

11. Defendant OLIVER'S acts constitute negligence and gross negligence that caused or contributed to Plaintiff's injuries. Defendant OLIVER'S negligence is an unexcused breach of Chapter 545 of the Texas Transportation Code. Chapter 545 was intended to protect Plaintiff, and Plaintiff's injuries are the kind the law was designed to protect against. Defendant OLIVER'S acts or omissions proximately caused Plaintiff's injuries. Defendant OLIVER'S conduct when viewed objectively involved an extreme degree of risk considering the probability and magnitude of the potential harm to others, and Defendant OLIVER had actual subjective awareness of the risk involved but proceeded anyway with conscious indifference to the rights, safety, and welfare of others.

12. At the time of the incident in question, Defendant OLIVER was an employee of Defendant PROGRESSIVE and was acting within the course and scope of his employment for Defendant PROGRESSIVE. Defendant PROGRESSIVE is liable for the torts committed by its employees. Defendant PROGRESSIVE employee, while acting within the course and scope of his employment (and in furtherance of Defendant PROGRESSIVE'S business), had a general duty to exercise reasonable care in performing his work. Defendant PROGRESSIVE'S employee, however, failed to exercise the requisite standard of care under the circumstances. Therefore,

pursuant to the doctrine of *respondeat superior*, Defendant PROGRESSIVE is liable for Defendant OLIVER'S negligence, and for any resulting injuries sustained by Plaintiff.

13. In the alternative, upon information and belief, Plaintiff specifically alleges that at all relevant times, Defendants were acting in the capacities of principal-agent or master-servant for one another, were acting within the course and scope of said agency or servitude, and ratified the conduct of each other Defendant.

14. In the alternative, if Defendant PROGRESSIVE contends that Defendant OLIVER was not an employee, then Defendant OLIVER was a statutory employee of Defendant PROGRESSIVE pursuant to 49 C.F.R. § 376.12.

**B. Negligence and/or Gross Negligence of Defendant PROGRESSIVE for Negligent Hiring, Entrustment, Supervision, and/or Retention of Defendant OLIVER**

15. The preceding paragraphs are incorporated herein.

16. Defendant PROGRESSIVE exercised control over the vehicle driven by Defendant OLIVER.

17. As a motor carrier, Defendant PROGRESSIVE has duties under the Federal Motor Carrier Safety Regulations and common law to properly qualify, hire, train, retain, and supervise its employees and statutory employees, including Defendant OLIVER.

18. Defendant PROGRESSIVE entrusted the vehicle to Defendant OLIVER, a reckless and incompetent driver.

19. Defendant PROGRESSIVE knew or through the exercise of reasonable care should have known that Defendant OLIVER was a reckless and incompetent driver.

20. Defendant PROGRESSIVE was negligent and breached its duty in hiring Defendant OLIVER, failing to properly inquire into his competence and qualifications, failing to



adequately supervise Defendant OLIVER, failing to adequately train Defendant OLIVER, and in failing to exercise reasonable care in retaining Defendant OLIVER.

21. The foregoing negligence and/or gross negligence by Defendant PROGRESSIVE was a proximate cause of damages to Plaintiff.

## **VII. JOINT LIABILITY**

22. Pleading in the alternative, Defendants are jointly liable for Plaintiff's harm under the theories of joint and several liability; acting in concert; respondeat superior; agency; non-delegable duty; alter ego; actual and apparent authority; participatory liability; aiding and abetting; joint enterprise; and/or ratification.

## **VIII. MISNOMER AND ASSUMED NAME**

23. In the event any parties are misnamed and/or not included herein, such entities are/were "alter egos." Plaintiff relies on Texas Civil Statutes Article 6133 and/or Texas Rule of Civil Procedure 28 to properly identify the corporate Defendants herein.

## **IX. DEFENDANT'S CLAIMED AFFIRMATIVE DEFENSES**

24. Any affirmative defenses asserted by Defendants are factually and legally inapplicable and incorrect.

## **X. RES IPSA LOQUITUR**

25. The doctrine of res ipsa loquitur applies in this case because the event is of a kind which does not ordinarily occur in the absence of negligence; other responsible causes are sufficiently eliminated by the evidence; and the negligence is within the scope of Defendants' duties.

## **XI. DAMAGES**

26. Plaintiff seeks damages within the jurisdictional limits of this Court in excess of \$1,000,000 excluding interest, statutory or punitive damages and penalties, and attorney's fees and costs.

27. The damages Plaintiff seeks include, but are not limited to:

- Compensatory damages
- Actual damages
- Consequential damages
- Lost future income
- Lost past income
- Past medical care
- Future medical care
- Past pain and suffering
- Future pain and suffering
- Past mental anguish
- Future mental anguish
- Past impairment
- Future impairment
- Past disfigurement
- Future disfigurement
- Past loss of household services
- Future loss of household services
- Past loss of consortium
- Future loss of consortium
- Interest on damages (pre- and post-judgment)
- Court costs
- Expert witness fees
- Deposition costs
- Attorney's fees
- Exemplary damages
- Other relief as the Court may deem just and proper.

## **XII. CONDITIONS PRECEDENT**

28. All conditions precedent has been performed or have occurred.

## **XIII. NOTICE OF INTENT TO USE DOCUMENTS**

29. Plaintiff gives notice under Rule 193.7 that he intends to use materials produced in this case against the producing party.

## **XIV. NOTICE OF MANDATORY INITIAL DISCLOSURES**

30. Plaintiff requests that Defendants timely disclose the information and materials required by Texas Rule of Civil Procedure 194.2(b)(1)–(12).

**XV. JURY DEMAND**

31. Plaintiff requests a jury trial. TEX. R. CIV. P. 216(a).

**XVI. PRAYER**

Plaintiff requests that Defendants be cited to appear and answer, and that on final trial the Court will award Plaintiff the relief requested above and all other just relief.

Respectfully Submitted,

MORROW & SHEPPARD LLP

/s/ John D. Sheppard

John D. Sheppard

State Bar No. 24051331

Attorney-In-Charge

Nicholas A. Morrow

State Bar No. 24051088

Patrick W. McGinnis

State Bar No. 24102179

5151 San Felipe, Suite 100

Houston, Texas 77056

713.489.1206 tel.

713.893.8370 fax

All E-Service To:

msfiling@morrowsheppard.com

jsheppard@morrowsheppard.com

nmorrow@morrowsheppard.com

pmcginnis@morrowsheppard.com

mhardy@morrowsheppard.com

**COUNSEL FOR PLAINTIFF**

## CAUSE NO. 21C1089-005

FRUCTUOSO TORRES

Plaintiff,

VS.

JASON THOMAS OLIVER, AND PROGRESSIVE  
TRANSPORTATION, LLC

Defendant.

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IN THE COURT OF

BOWIE COUNTY, TEXAS

5TH JUDICIAL DISTRICT

AFFIDAVIT OF SERVICE

On this day personally appeared DANE RAY CUPPETT who, being by me duly sworn, deposed and said:

"The following came to hand on Sep 2, 2021, 10:54 am,

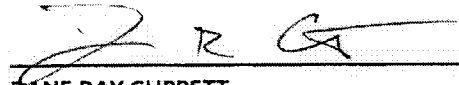
## CITATION AND PLAINTIFF'S ORIGINAL PETITION AND JURY DEMAND,

and was executed at 125 E. 11TH STREET, AUSTIN, TX 78701 within the county of TRAVIS at 03:44 PM on Thu, Sep 02 2021, by delivering a true copy to the within named

JASON THOMAS OLIVER, BY DELIVERING TO J. BRUCE BUGG JR. TEXAS TRANSPORTATION COMMISSION, WHERE THE DOCUMENT WAS ACCEPTED BY ALICIA RAMON-KANE, DESIGNATED AGENT

in person, having first endorsed the date of delivery on same. A \$25.00 service fee was tendered at the time of service.

I am a person over eighteen (18) years of age and I am competent to make this affidavit. I am a resident of the State of Texas. I am familiar with the Texas Rules of Civil Procedure as they apply to service of Process. I am not a party to this suit nor related or affiliated with any herein, and have no interest in the outcome of the suit. I have never been convicted of a felony or of a misdemeanor involving moral turpitude. I have personal knowledge of the facts stated herein and they are true and correct."


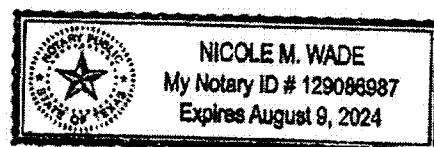
  
DANE RAY CUPPETT

Certification Number: PSC-7114

Certification Expiration: 10/31/2021

BEFORE ME, a Notary Public, on this day personally appeared DANE RAY CUPPETT, known to me to be the person whose name is subscribed to the foregoing document and, being by me first duly sworn, declared that the statements therein contained are within his or her personal knowledge and are true and correct.

SUBSCRIBED AND SWORN TO ME ON 09/07/2021

  
Notary Public, State of Texas

Jill Harrington  
District Clerk  
Bowie County, Texas  
Christy Wright, Deputy

**CITATION-PERSONAL SERVICE  
THE STATE OF TEXAS  
21C1089-005**

**FRUCTUOSO TORRES VS. JASON THOMAS OLIVER ET AL**

**TO OLIVER, JASON THOMAS  
BY SERVING: J. BRUCE BUGG JR.  
TEXAS TRANSPORTATION COMMISSION  
125 E. 11<sup>TH</sup> STREET  
AUSTIN, TX 78701**

**DEFENDANT in the above styled and numbered cause:**

**YOU HAVE BEEN SUED.** You may employ an attorney. If you do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you. In addition to filing a written answer with the clerk, you may be required to make initial disclosures to the other parties of this suit. These disclosures generally must be made no later than 30 days after you file your answer with the clerk. Find out more at TexasLawHelp.org.

Attached is a copy of the ORIGINAL PETITION W/DISCOVERY & JURY DEMAND in the above styled and numbered cause, which was filed on September 01, 2021 in the 5th District Court of Bowie County, New Boston, Texas. This instrument describes the claim against you.

**ISSUED AND GIVEN UNDER MY HAND AND SEAL of said Court at office, ON THIS THE 1ST DAY OF SEPTEMBER, 2021.**

**ATTY FOR PETITIONER OR PETITIONER**

**JOHN D SHEPPARD  
5151 SAN FELIPE  
SUITE 100  
HOUSTON TX 77056**



**JILL HARRINGTON  
BOWIE COUNTY DISTRICT CLERK  
710 JAMES BOWIE DRIVE  
NEW BOSTON, TX 75570**

**BY: /s/ Paige Foster  
DEPUTY**

**OFFICER'S RETURN**

Came to hand on the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_.M.  
**EXECUTED** at \_\_\_\_\_, within the County of \_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_.M. on  
the \_\_\_\_\_ day of \_\_\_\_\_, by delivering to the within named \_\_\_\_\_, in person a true copy of  
such petition to such copy of citation and endorsed on such copy of citation the date of delivery.

**NOT EXECUTED**, the diligence used to execute being \_\_\_\_\_; for the following reason \_\_\_\_\_, the  
defendant may be found \_\_\_\_\_.

**FEE FOR SERVING CITATION: \$ \_\_\_\_\_**

**TO CERTIFY WHICH WITNESS MY HAND OFFICIALLY.**

\_\_\_\_\_  
**SHERIFF/CONSTABLE  
COUNTY, TEXAS  
BY: \_\_\_\_\_ DEPUTY**

**COMPLETE IF YOU ARE A PERSON OTHER THAN A SHERIFF, CONSTABLE OR CLERK OF THE COURT**

In accordance with Rule 107: The officer or authorized person who serves, or attempts to serve, a citation shall sign the return. The return must either be verified or be signed under penalty of perjury. A return signed under penalty of perjury must contain the statement below in substantially the following form:

"My name is \_\_\_\_\_, my date of birth is \_\_\_\_\_, and my address is  
(First, Middle, Last)

(Street, City, State, Zip)

**I DECLARE UNDER PENALTY OF PERJURY THAT THE FORGOING IS TRUE AND CORRECT.**

Executed in \_\_\_\_\_ County, State of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
**Declarant/Authorized Process Server**

\_\_\_\_\_  
**(ID # & Expiration of Certification)**

## CAUSE NO. 21C1089-005

FRUCTUOSO TORRES

§

IN THE COURT OF

§

Plaintiff,

§

VS.

§

BOWIE COUNTY, TEXAS

§

JASON THOMAS OLIVER, AND PROGRESSIVE  
TRANSPORTATION, LLC

§

§

Defendant.

§

5TH JUDICIAL DISTRICT

AFFIDAVIT OF SERVICE

On this day personally appeared DANE RAY CUPPETT who, being by me duly sworn, deposed and said:

"The following came to hand on Sep 2, 2021, 10:34 am,

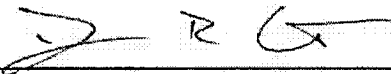
CITATION AND PLAINTIFF'S ORIGINAL PETITION AND JURY DEMAND,

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PROGRESSIVE TRANSPORTATION, LLC, BY DELIVERING TO ITS REGISTERED AGENT CORPORATION SERVICE COMPANY WHERE IT WAS RECEIVED BY EVIE LICHTENWALTER, DESIGNATED AGENT

in person, having first endorsed the date of delivery on same.

I am a person over eighteen (18) years of age and I am competent to make this affidavit. I am a resident of the State of Texas. I am familiar with the Texas Rules of Civil Procedure as they apply to service of Process. I am not a party to this suit nor related or affiliated with any herein, and have no interest in the outcome of the suit. I have never been convicted of a felony or of a misdemeanor involving moral turpitude. I have personal knowledge of the facts stated herein and they are true and correct."



DANE RAY CUPPETT

Certification Number: PSC-7114

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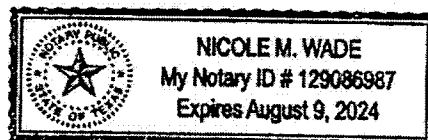
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SUBSCRIBED AND SWORN TO ME ON

09/07/2021



Notary Public, State of Texas



Filed 09/30/21 9:20 AM  
 Jill Harrington  
 District Clerk  
 Bowie County, Texas  
 Stephanie Wetherington, Deputy

**CITATION-PERSONAL SERVICE  
 THE STATE OF TEXAS  
 21C1089-005**

**FRUCTUOSO TORRES VS. JASON THOMAS OLIVER ET AL**

**TO PROGRESSIVE TRANSPORTATION, LLC**

BY SERVING: CORPORATION SERVICE COMPANY D/B/A CSC-LAWYERS INCORPORATING SERVICE COMPANY, REGISTERED AGENT  
 211 E 7<sup>TH</sup> STREET SUITE 620  
 AUSTIN, TX 78701

**DEFENDANT in the above styled and numbered cause:**

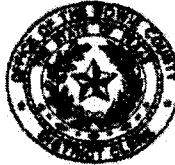
**YOU HAVE BEEN SUED.** You may employ an attorney. If you do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you. In addition to filing a written answer with the clerk, you may be required to make initial disclosures to the other parties of this suit. These disclosures generally must be made no later than 30 days after you file your answer with the clerk. Find out more at TexasLawHelp.org.

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**ATTY FOR PETITIONER OR PETITIONER**

**JOHN D SHEPPARD  
 5151 SAN FELIPE  
 SUITE 100  
 HOUSTON TX 77056**



**JILL HARRINGTON  
 BOWIE COUNTY DISTRICT CLERK  
 710 JAMES BOWIE DRIVE  
 NEW BOSTON, TX 75570**

BY: /s/ Paige Foster  
**DEPUTY**

**OFFICER'S RETURN**

Came to hand on the \_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_ o'clock \_\_\_\_ M.

**EXECUTED** at \_\_\_\_\_, within the County of \_\_\_\_\_, at \_\_\_\_ o'clock \_\_\_\_ M. on the \_\_\_\_ day of \_\_\_\_\_, by delivering to the within named \_\_\_\_\_, in person a true copy of such petition to such copy of citation and endorsed on such copy of citation the date of delivery.

**NOT EXECUTED**, the diligence used to execute being \_\_\_\_\_; for the following reason \_\_\_\_\_, the defendant may be found \_\_\_\_\_.

**FEE FOR SERVING CITATION: \$ \_\_\_\_\_**

**TO CERTIFY WHICH WITNESS MY HAND OFFICIALLY.**

\_\_\_\_\_  
**SHERIFF/CONSTABLE  
 COUNTY, TEXAS  
 BY: \_\_\_\_\_ DEPUTY**

**COMPLETE IF YOU ARE A PERSON OTHER THAN A SHERIFF, CONSTABLE OR CLERK OF THE COURT**

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"My name is \_\_\_\_\_, my date of birth is \_\_\_\_\_, and my address is \_\_\_\_\_  
 (First, Middle, Last) (Street, City, State, Zip)

**I DECLARE UNDER PENALTY OF PERJURY THAT THE FORGOING IS TRUE AND CORRECT.**

Executed in \_\_\_\_\_ County, State of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
**Declarant/Authorized Process Server**

\_\_\_\_\_  
**(ID # & Expiration of Certification)**

CAUSE NO. 21C1089-005

FRUCTUOSO TORRES,  
*Plaintiff,*§  
§  
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IN THE DISTRICT COURT

V.

5<sup>TH</sup> JUDICIAL DISTRICTJASON THOMAS OLIVER, AND  
PROGRESSIVE TRANSPORTATION,  
LLC,  
*Defendants.*

BOWIE COUNTY, TEXAS

**DEFENDANTS JASON THOMAS OLIVER AND PROGRESSIVE TRANSPORTATION,  
LLC.'S ORIGINAL ANSWER**

TO THE HONORABLE COURT:

COME NOW Defendants Jason Thomas Oliver and Progressive Transportation, LLC, and file their Original Answer, and as grounds for such would respectfully show unto the Court as follows:

**I.  
GENERAL DENIAL**

1. The TEXAS RULES OF CIVIL PROCEDURE and, in particular Rule 92, affords citizens and corporations of this state certain protections with respect to lawsuits of this type. Accordingly, Defendants invoke the provisions of that rule and do generally deny the allegations now made against them by the Plaintiff and his attorney.

2. At any trial of this cause, Defendants will exercise their legal rights in this regard and require Plaintiff to carry the burden of proof, which the law imposes upon him to prove each and every material allegation contained in his pleadings by a preponderance of the credible evidence.



## **II.** **DEFENSES**

3. Defendants would show that Jason Thomas Oliver was confronted by a “sudden emergency” or an “emergency” that arose suddenly and unexpectedly, which was not proximately caused by any negligence on the part of Jason Thomas Oliver and which to a reasonable person requires immediate action without time for deliberation.

4. Plaintiff’s damages, if any, were proximately caused by preexisting and/or subsequent physical conditions and medical conditions and/or accidents.

5. As to medical expenses only the amount actually paid and/or incurred by Plaintiff is recoverable by Plaintiff in this lawsuit. TEX. CIV. PRAC. & REM. CODE SECTION 41.0105. Any amount that is discounted, written off, or adjusted following contribution of a third party payor (including but not limited to Medicaid, Medicare or by Managed Care Administrator) is not an amount that is “paid or incurred,” and should not be submitted to the jury or included in any economic damage award.

6. Plaintiff’s damages with respect to loss of earnings and/or loss of earning capacity, if any, are limited to a net loss after reduction for income tax payments or unpaid tax liability pursuant to any federal income tax law as set forth in §18.091 of the TEXAS PRACTICE & REMEDIES CODE.

7. Pleading further, Defendants Jason Thomas Oliver and Progressive Transportation, LLC state that Plaintiff is not entitled to recover punitive damages or exemplary damages in any form or fashion in that it would violate Defendants’ rights under the Constitution of the United States and the Constitution of the State of Texas.

8. In the alternative, and without waiving the foregoing, Defendants are entitled to the protections afforded to them under TEXAS PRACTICE & REMEDIES CODE ANN. §41.003 and §41.033 et. seq.

**III.**  
**JURY DEMAND**

9. Defendants Jason Thomas Oliver and Progressive Transportation, LLC demand a trial by jury and tender their jury fee.

**V.**  
**PRAYER**

WHEREFORE, PREMISES CONSIDERED, Defendants Jason Thomas Oliver and Progressive Transportation, LLC pray that upon final hearing hereof that Plaintiff take nothing by way of his causes of action against Defendants, that costs of court be assessed against Plaintiff, and for such other and further relief to which Defendants may show themselves justly entitled, either at law or in equity.

Respectfully submitted,

**CASTAGNA SCOTT, L.L.P.**  
1120 S. Capital of Texas Highway  
Building 2, Suite 270  
Austin, Texas 78746  
512/329-3290  
888/255-0132 fax

By: /s/ Lynn S. Castagna  
Lynn S. Castagna  
State Bar No. 03980520  
[Lynn@TexasDefense.com](mailto:Lynn@TexasDefense.com)  
Gerry Lowry  
State Bar No. 12641350  
[Gerry@TexasDefense.com](mailto:Gerry@TexasDefense.com)

**ATTORNEYS FOR DEFENDANTS**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been served upon the following person(s), in the manner(s) indicated below:

**VIA E-SERVICE**

John D. Sheppard  
MORROW & SHEPPARD  
5151 San Felipe St., Ste. 100  
Houston, Texas 77056

and in accordance with the Texas Rules of Civil Procedure, on the 27th day of September, 2021.

/s/ Gerry Lowry  
Gerry Lowry

**Automated Certificate of eService**

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Diana Delk on behalf of Lynn Castagna  
 Bar No. 03980520  
 diana@texasdefense.com  
 Envelope ID: 57608831  
 Status as of 9/27/2021 9:22 AM CST

## Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
MICHELE HARDY		MHARDY@MORROWSHEPPARD.COM	9/27/2021 9:15:40 AM	SENT

Associated Case Party: PROGRESSIVE TRANSPORTATION, LLC

Name	BarNumber	Email	TimestampSubmitted	Status
Lynn Castagna		lynn@texasdefense.com	9/27/2021 9:15:40 AM	SENT
Gerry Lowry		gerry@texasdefense.com	9/27/2021 9:15:40 AM	SENT

**Case # 21C1089-005 - FRUCTUOSO TORRES vs. JASON THOMAS C****Envelope Information**

<b>Envelope Id</b> 57608831	<b>Submitted Date</b> 9/27/2021 9:15 AM CST	<b>Submitted User Name</b> diana@texasdefense.com
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**Case Information**

<b>Location</b> Bowie County - 5th District Court	<b>Category</b> Civil - Injury or Damage	<b>Case Type</b> Motor Vehicle Accident
<b>Case Initiation Date</b> 9/1/2021	<b>Case #</b> 21C1089-005	
<b>Assigned to Judge</b> Miller, Bill		

**Filings**

<b>Filing Type</b> EFileAndServe	<b>Filing Code</b> Answer/Response
-------------------------------------	---------------------------------------

**Filing Description**  
Defendants' Original Answer

**Client Reference Number**  
3003.21035

**Filing Status**  
Submitting

**Lead Document**

File Name	Description	Security	Download
2021-09-27 Defs' OA.pdf	2021-09-27 Defs' OA.pdf	Does not contain sensitive data	Original File

**eService Details**

Status	Name	Firm	Served	Date Opened
Not Sent	MICHELE HARDY		No	Not Opened
Not Sent	Lynn Castagna		No	<a href="#">Help</a>

Status	Name	Firm	Served	Date Opened
Not Sent	Gerry Lowry		No	Not Opened

## Parties with No eService

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<b>Name</b>	<b>Address</b>
FRUCTUOSO TORRES	5151 SAN FELIPE SUITE 100 Houston Texas 77056

<b>Name</b>	<b>Address</b>
JASON THOMAS OLIVER	966 BRASWELL ROAD SMITHFIELD North Carolina 27577

## Fees

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### Answer/Response

Description	Amount
Filing Fee	\$0.00
Jury Fee	\$40.00
<b>Filing Total:</b>	<b>\$40.00</b>

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Total Filing Fee	\$40.00
Payment Service Fee	\$1.16
<b>Envelope Total:</b>	<b>\$41.16</b>

<b>Transaction Amount</b>	\$41.16		
<b>Transaction Id</b>	84591203		
<b>Filing Attorney</b>	Lynn Castagna	<b>Order Id</b>	057608831-0
<b>Filer Type</b>	Not Applicable	<b>Transaction Response</b>	Authorized